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EXAMINER

PORTER, RACHEL L

ART UNIT	PAPER NUMBER
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3626

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/628,400

Applicant(s)

SELBY, DAVID A.

Examiner

Rachel L. Porter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment received 6/18/04. Claims 1-26 are pending.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 currently recites that the “past reservation information including information unrelated to said particular perishable commodity.” It is unclear to the Examiner what type of information the Applicant intends to claim with the presently recited “information unrelated to said particular perishable commodity.” It is respectfully submitted that such a limitation is tantamount to a negative limitation, which attempts to define the information in terms of what it is not, rather than what it is. As such, the scope of the claim cannot be ascertained. Claims 2-13 inherit the deficiencies of claim 1 through dependency and are also rejected.

Claim 14 recites similar wording to claim 14. As such, the analysis of claim 1 may be applied to claim 14. Claims 15-26 inherit the deficiencies of claim 14 through dependency and are also rejected.

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Claim 1 recites the limitation "comparing said gathered past system-wide reservation information unrelated to said particular perishable commodity" in lines 10-12. There is insufficient antecedent basis for this limitation in the claim. The claim recites two types of perishable commodities (those that have already perished and those with reservations that have not perished.) It is unclear which perishable commodity the Applicant is referencing in the current step. Claims 2-13 inherit the deficiencies of claim 1 through dependency and are also rejected.

In light of the 112 2nd problems, the examiner is interpreting the claims and applying prior art as best possible using these interpretations. These interpretations of claim language are for examination purposes only. The Examiner will interpret the "perishable commodity" to be a seat on a flight and the "unrelated information" to be other seats on the flight.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Jung (4,775,936).

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(A) As per claim 1 Jung teaches a forecasting system for a particular perishable commodity comprising the steps of:

a) gathering past system-wide reservation information for perishable commodities that have already perished (Jung; col. 2, lines 15-17), said system wide information including information unrelated to said particular perishable commodity

b) gathering current reservation information for a particular perishable commodity that has not yet perished (Jung; col. 2, lines 15-17);

c) comparing the gathered past system-wide reservation information unrelated to said particular perishable commodity and the current reservation information (Jung; col. 2, lines 15-50, and col. 4, lines 15-25);

d) calculating, based on the comparison, the demand-based booking level based on average "no-shows" (i.e., likelihood that the current reservation will materialize) (Jung; col. 2, lines 15-50, and col. 4, lines 15-25);

e) outputting the demand-based booking level (DBBL) based on average "no-shows" (i.e., materialization forecast) results (Jung; col. 2, lines 15-50, col. 4, lines 15-25, and Figure 4).

(B) As per claim 2, Jung teaches the past system-wide reservation data includes historical commodity details unrelated to said particular perishable commodity (Jung; col. 3, lines 29-31).

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(C) Apparatus claims 14-15 differ from claims 1-2, respectively, in that claims 1-2 contain a method recited as a series of function steps whereas claims 14-15 contain features recited in a "means plus function" format. As the method of step claims 1-2 has been shown to be disclosed or obvious by the combined teachings of Jung, it is readily apparent that the "means" to accomplish those method steps is obvious in view of the prior art. As such, the limitations recited in claims 14-15 are rejected for the same reasons given for method claims 1-2, respectively, and incorporated herein.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3-11, and 16-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung as applied to claims 1-2 and 14-15 above, and further in view of Eldering (6,298,348 B1).

(A) As per claim 3, Jung teaches past system-wide reservation information that is unrelated to the potential purchase of said particular perishable commodity (Jung; col. 3, lines 30-45-see 112,2nd par. Rejection). However, Jung does not expressly teach that the past system-wide reservation information includes Point-of-Sale (POS) information. Eldering teaches the inclusion of POS information (Eldering; col. 5, line 65

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to col. 6, line 8, and col. 9, lines 42-67). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to add the POS information of Eldering to the materialization method of Jung with the motivation of performing consumer profiling (Eldering; col. 5, lines 65-66).

(B) As per claim 4, Jung teaches the past system-wide reservation information includes materialization information unrelated to the potential purchase of said particular perishable commodity (Jung; col. 2, lines 30-35 see 112,2nd par. Rejection).

(C) As per claims 5-6, Jung teaches past system-wide reservation information (Jung; col. 3, lines 30-45). However, Jung does not expressly disclose the past reservation information including demographic information about the person who made the past reservations and specifically age, sex, and annual income. Eldering teaches the historical information including demographic information about the purchaser, such as age, sex and annual income (Eldering; Figure 2A and col. 7, lines 2-52). It would have been obvious to one of ordinary skill in the art at the time of the invention to add the demographic information of Eldering to the materialization forecasting method of Jung with the motivation of forming "a description of the consumer including demographic characteristics and product preferences" (Eldering; col. 3, lines 34-36).

(D) As per claim 7 and 11, Jung teaches the gathering of historical traffic flow information including aircraft capacity (i.e., commodity details) for each flight that is then

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compared to current traffic flow information (Jung; col. 3, lines 25-45 and col. 4, lines 14-20).

(B) As per claims 8-9, Jung teaches current and historical reservation information (Jung; col. 4, lines 15-20). However, Jung does not expressly include Point-of-Sale (POS) information. Eldering teaches the current reservation information including POS records (Eldering; col. 9, lines 42-50) and demographic information about the person making the purchase (Eldering; col. 12, lines 33-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to add the POS and demographic information in the reservation information method of Jung with the motivation of "understanding the demographics and product preferences of the consumer in order to be able to determine if an advertisement is appropriate" (Eldering; col. 2, lines 22-24).

(C) Claim 10 recites the same limitations as claim 6, and is therefore, rejected for the same reasons provided for that claim, and incorporated herein.

(D) Apparatus claims 16-24 differ from claims 3-11, respectively, in that claims 3-11 contain a method recited as a series of function steps whereas claims 16-24 contain features recited in a "means plus function" format. As the method of step claims 3-11 has been shown to be disclosed or obvious by the combined teachings of Jung and Eldering, it is readily apparent that the "means" to accomplish those method steps is obvious in view of the prior art. As such, the limitations recited in claims 16-24 are

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rejected for the same reasons given for method claims 3-11, respectively, and incorporated herein.

6. Claims 12-13 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung and Eldering as applied to claims 11 and 24 above, and further in view of Whitesage (5,191,523).

(A) As per claim 12, the combined teaches of Jung and Eldering teach the current reservation information includes Point-of-Sale (POS) information (Eldering; col. 5, line 65 to col. 6, line 8, and col. 9, lines 42-50). However, the combined teachings of Jung and Eldering do not expressly disclose the POS information including a booking carrier, booking recency or fare code information. Whitesage, teaches the POS information including booking carrier, booking recency and fare code information (Whitesage; Figures 3, 6AF). It would be obvious to one of ordinary skill in the art at the time of the invention to expand the POS information of the combined method of Jung and Eldering to include the specific POS details of Whitesage with the motivation of "recording the amount payable to the airline issuing the ticket and the receivable due from the client" (Whitesage; col. 1, lines 60-62).

(B) As per claim 13, Jung teaches the gathering of historical traffic flow information including aircraft capacity (i.e., commodity details) for each flight that is then compared to current traffic flow information because of similar traffic characteristics (Jung; col. 3, lines 25-45 and col. 4, lines 14-20).

(C) Apparatus claims 25-26 differ from claims 12-13, respectively, in that claims 12-13 contain a method recited as a series of function steps whereas claims 25-26 contain features recited in a "means plus function" format. As the method of step claims 12-13 has been shown to be disclosed or obvious by the combined teachings of Jung, Eldering and Whitesage, it is readily apparent that the "means" to accomplish those method steps is obvious in view of the prior art. As such, the limitations recited in claims 25-26 are rejected for the same reasons given for method claims 12-13, and incorporated herein.

Response to Arguments

7. Applicant's arguments filed 6/18/04 have been fully considered but they are not persuasive.

(A) On pages 10-11, Applicant attempts to differentiate the reservation information recited in the pending claims from that included in the Jung reference. More specifically, Applicant argues that reservation information as "defined" in the specification is related to all reservation information, not just the "traffic information" of the Jung reference.

In response, the Applicant's arguments suggest that the Applicant intends a particular definition with the recitation of the term "reservation information" in the current claim language. However, the Applicant does not point out and the Examiner was unable to find a definition of this term in the current claim language or in the originally filed disclosure that supports narrower interpretation of the term. At most, the Applicant

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has relied upon broad, non-committal or exemplary language in the specification. (e.g. reservation information includes commodity details... and/OR POS information relating to reservations for perishable commodities). (Applicant's specification, page 11, lines 12-19, description of past and current reservation information.) In the absence of such definitions, the Examiner must give the claim language the broadest reasonable interpretation, and the Examiner understands the term "reservation information" to include various types of information.

(B) Applicant argues the newly added limitation of the system gathering and comparing data *unrelated* to a particular perishable commodity. In particular, the applicant argues the newly added limitation overcomes the prior art of record because Jung gathers data that is *related* to the perishable commodity.

In response, the Examiner could not ascertain the scope of the term "information unrelated said particular perishable commodity". (See 112, 2nd paragraph rejection) For example, if the commodity is an airline seat, information on 2 separate seats on the same flight may be reasonably interpreted as unrelated data (i.e. dealing with separate commodities) or related data (dealing with the same flight). Similarly, information on 2 separate flights may be deemed "related" because they are both related to flight information, or unrelated, because they are distinguished by some other attribute (i.e. different destinations, origins, etc.)

In light of the 112, 2nd paragraph issues raised by applicant's amendment's, the Examiner has given the prior art the broadest reasonable interpretation, and maintained the previous art rejection. If the Applicant intends to claim specific attributes of

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reservation information, the Examiner suggests including particular details (i.e. reciting specific examples of commodity details, or demographic data details) in the current claim language. Also additional details, (e.g. specific calculation steps or algorithms/equations), which make the comparing and calculating steps unique to the type of data recited, may further narrow the interpretation of these terms and steps for the purposes of applying art.

Conclusion

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

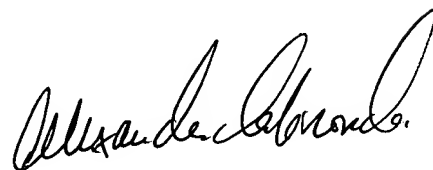
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel L. Porter whose telephone number is 703-305-0108. The examiner can normally be reached on M-F, 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703)305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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ALEXANDER KALINOWSKI
PRIMARY EXAMINER